

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Crystal Coast Communications)	File No. EB-03-NY-329
WRIV(AM))	
Riverhead, New York)	NAL/Acct. No. 200432380009
)	FRN: 0009 6876 82

FORFEITURE ORDER

Adopted: October 19, 2004**Released: October 21, 2004**

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) to Crystal Coast Communications, Inc. ("Crystal Coast"), licensee of radio station WRIV(AM), Riverhead, New York, for willful and repeated violation of Sections 11.61(a)(2)(i)(A) and 73.1820(a)(1)(C)(iii) of the Commission's Rules ("Rules").¹ The noted violations are for failing to conduct required weekly tests of the Emergency Alert System ("EAS") and failing to maintain required station records of each test and activation of EAS.

2. On March 8, 2004, the Commission's New York, New York Field Office ("New York Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL"), to Crystal Coast for a proposed forfeiture in the amount of three thousand dollars (\$3,000).² Crystal Coast filed a response to the *NAL* dated April 2, 2004.

II. BACKGROUND

3. On September 23, 2003, an agent from the New York Office conducted an EAS inspection of radio station WRIV(AM), located at 40 West Main Street, Riverhead, New York, licensed to Crystal Coast. The agent did not find station records for EAS testing done for the weeks of: March 9-29, 2003; April 13 to May 3, 2003; May 11, 2003 to August 9, 2003; and August 24-30, 2003, or find reasons given why the EAS tests were not received.

4. On March 8, 2004, the New York Office issued the subject *NAL* to Crystal Coast in the amount of \$3,000 for apparent willful and repeated violation of Sections 11.61(a)(2)(i)(A) and 73.1820(a)(1)(C)(iii) of the Rules. In its response to the *NAL*, Crystal Coast disputes the proposed

¹ 47 C.F.R. § 11.61(a)(2)(i)(A) and 47 C.F.R. § 73.1820(a)(1)(C)(iii).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432380009 (Enf. Bur., New York Office, released March 8, 2004).

violations, claims that it showed the agent during the inspection the EAS reports that the Commission cited it for not having, and urges the Commission to rescind or reduce the forfeiture amount based on its compliance history, its small market size and in the interest of justice.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).⁵ In examining Crystal Coast’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

6. Section 11.61(a)(2)(i)(A) of the Rules requires broadcast stations to conduct required weekly tests of the EAS header and EOM codes at least once a week at random days and times. According to the agent, during the investigation, Crystal Coast was unable to show the agent that it had transmitted or received EAS tests for the weeks listed above.

7. Section 73.1820(a)(1)(C)(iii) requires broadcast stations to make entries into the station log of each EAS test and activation made. Crystal Coast did not show the agent any tapes or other records of those EAS tests having been made during the time period in question, nor did it have records stating why it did not make entries of transmitting or receiving tests for that time period.

8. In its response to the NAL, Crystal Coast claims that that it gave the Commission agent, at the time of the inspection, documentation of the EAS messages for the time period required, as well as entries for the EAS messages received and rebroadcast. According to the Commission agent, however, Crystal did not provide him with any of these missing records on September 3, 2003 during the inspection, or thereafter. We note further that the records in question also were not associated with Crystal Coast’s response to the *NAL* filed on April 12, 2004. Thus, Crystal Coast has not substantiated its claims that it transmitted and received or logged the required EAS tests on any of the dates in question. In the absence of any factual basis for Crystal Coast’s denial, we conclude on the basis of the Commission agent’s investigation, that Crystal Coast failed to conduct and does not have station records to demonstrate that it conducted EAS testing for WRIV(AM) for the weeks of: March 9-29, 2003; April 13 to May 3, 2003; May 11, 2003 to August 9, 2003; and August 24-30, 2003.⁷

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See, *Roser Communications Network, Inc.*, 18 FCC Rcd 11766, 11768 (Enf. Bur. 2003), making a similar finding where a licensee denied alleged EAS violations and did not provide any factual basis for the denial.

9. Based on the findings of the *NAL* and Crystal Coast's response thereto, we find that Crystal Coast's violation of Sections 11.61(a)(2)(i)(A) and 73.1820(a)(1)(C)(iii) of the Rules was willful⁸ and repeated.⁹

10. Crystal Coast seeks a cancellation or reduction in the amount of the proposed forfeiture claiming that it has a history of overall compliance with the requirements of the Act and the Commission rules. A review of its record confirms that Crystal Coast has a history of overall compliance with Rules;¹⁰ thus, we find that a reduction of the proposed forfeiture, from three thousand dollars (\$3,000) to two thousand four hundred dollars (\$2,400), is warranted.

11. Finally, Crystal Coast seeks a reduction of the penalty based on its economic standing as "a small market AM stand alone radio station. . ." with keen competition, but has submitted no financial documentation to support this claim of economic hardship. As stated in Crystal Coast's *NAL*, the Commission will not consider reducing or canceling a forfeiture on the basis of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Because Crystal Coast submitted none of this documentation, the Commission finds that a reduction on this basis is not warranted.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Crystal Coast, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand four hundred dollars (\$2,400) for willfully and repeatedly violating Sections 11.61(a)(2)(i)(A) and 73.1820(a)(1)(C)(iii) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment shall be made by mailing a check or similar instrument, payable to the order of the

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, *supra* at 4388.

¹⁰ See *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21379 (Enf. Bur. 2003) (further reducing the proposed forfeiture from \$11,000 to \$8,800 for antenna structure lighting and registration violations due to the licensee's history of overall compliance); *South Central Communications Corp.*, 18 FCC Rcd 700, 702 (Enf. Bur. 2003) (reducing the proposed forfeiture from \$10,000 to \$8,000 for antenna structure lighting violations due to the licensee's history of overall compliance).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

"Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

14. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Mr. Paul F. Lotters, President and General Manager, Crystal Coast Communications, 30 Park Avenue, Cohoes, New York, 12047-3330.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹³See 47 C.F.R. § 1.1914.